Supreme Court, U.S.
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No. 87-859

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PAMELA S. MARTIN,
Petitioner,

vs.

CARLING NATIONAL BREWERIES, INC.,
a foreign corporation
G. HEILEMAN BREWING COMPANY, INC.,
a foreign corporation
d/b/a
CARLING NATIONAL BREWERIES,
JOHN SNYDER and CHARLES RHEIN
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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COMPLIANCE WITH RULE 28.1

Pursuant to Rule 28.1, Respondents state that at the time this action was filed Respondent Carling National Breweries, Inc., did not own or operate the Belleville, Illinois brewing facility involved herein, said facility having been purchased by Respondent G. Heileman Brewing Company, Inc., a Wisconsin corporation in 1979. Respondent Carling National Breweries, Inc., was a wholly owned subsidiary of Respondent G. Heileman Brewing Company, Inc., from the 1979 purchase date until January 1, 1984 at which time Carling National Breweries, Inc., ceased to exist. Respondent G. Heileman Brewing Company, Inc., does not have any non-wholly owned subsidiaries or affiliates. G. Heileman Brewing Company, Inc., was purchased in October 1987 by Amber Acquisition Corporation, a Delaware corporation, a wholly-owned subsidiary of Bond Corporation Holdings, Ltd. (BCH) an Australian corporation organized under the laws of Western Australia and authorized to do business at various points throughout the United States including Belleville, Illinois where the facility involved herein is located. Bond Corporation Holdings, Ltd. (BCH) has no parent company. Neither Amber Acquisition Corporation nor Bond Corporation Holdings, Ltd. (BCH) has any non-wholly owned subsidiaries or affiliates.

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I. STATEMENT

A. Petitioner's Complaint

On or about June 27, 1985 Petitioner filed an eleven (11) Count Complaint against the Respondents in the Circuit Court of Illinois for St. Clair County. (Respondents' App. page 1 through 16 inclusive). Counts I through IV allege alternatively that Respondent Carling National Breweries, Inc. and/or Respondent G. Heileman Brewing Company, Inc. discharged

Petitioner "without other justification" and in retaliation for Plaintiff having *threatened* to file a worker's compensation claim. (emphasis added). Count V was directed against Respondent John Snyder alleging an intentional interference with Petitioner's employment relation with Respondent Carling and/or Heileman. Counts VI and VII were directed against Respondent Charles Rhein and, while conceding Petitioner's membership within the Teamsters, contends that said labor organization was not able to protect the Petitioner from any form of discharge without just cause. In addition, Petitioner alleges that Respondent Rhein was negligent in failing to employ correct procedures prior to termination and in discharging Petitioner for reasons that did not constitute a bona fide qualification necessary to the proper performance of her duties. Petitioner additionally alleges that Respondent Rhein tortiously employed a defective dispute resolution procedure knowing that the Union was incapable of fulfilling its duty of fair representation, thereby rendering the exhaustion of internal remedies a futile exercise.

Counts VIII, IX, X and XI allege liability on the part of Respondent Carling and Respondent Heileman for those acts of Respondent Rhein articulated in Counts VI and VII. Petitioner's Complaint sought compensatory and punitive damages.

B. Proceedings Below

On August 14, 1985 Respondents filed a Petition for Removal in the United States District Court for the Southern District of Illinois on the basis that Petitioner's cause of action arose under laws of the United States, in particular §301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185. Thereafter Respondents filed a Motion to Dismiss the Petitioner's Complaint for, *inter alia*, failure to exhaust available contractual and administrative remedies. Thus urged Respondents, Petitioner had failed to utilize the exclusive remedy contained within the grievance and arbitration pro-

cedures of the collective bargaining agreement; had failed to file her Complaint within the six (6) month statute of limitations; and had failed to allege that the Union had breached its duty of fair representation. The District Court in a memorandum and Opinion dated April 11, 1986 dismissed Petitioner's Complaint concluding that Petitioner had failed to file her complaint within the six months statute of limitations established in *Del Costello v. International Brotherhood of Teamsters,* 462 U.S. 151 (1983); that Petitioner had failed to exhaust her contractual remedies; and that Petitioner had failed to allege that the Union had breached its duty of fair representation — an essential element in a Section 301 hybrid lawsuit.

On appeal, this case was argued before a three (3) member panel of the Seventh Circuit Court of Appeals on November 6, 1986 but no decision issued. The matter was thereafter consolidated, only for the purpose of *en banc* argument, with the case of *Lingle v. Norge Division of Magic Chef, Inc.*, Cause No. 85-2971 (7th Cir.). The majority opinion penned by Judge Flaum of the *en banc* Court, affirmed the District Court's Opinion. *Lingle v. Norge Division of Magic Chef, Inc.* and *Martin v. Carling National Breweries, Inc., et al.*, 823 F.2d 1031 (7th Cir. 1987).

While consolidated for the purpose of *en banc* argument *Lingle v. Norge* and *Martin v. Carling, et al.*, are significantly distinct. In *Lingle v. Norge* Petitioner alleged within a one count complaint that she had been discharged solely because she had exercised her rights under the Worker's Compensation Laws of the State of Illinois. Petitioner Martin, on the other hand, alleges that her discharge resulted from an alleged *intent* to seek benefits under the Illinois Worker's Compensation Act, occurred without other justification and, additionally, sets forth numerous theories of pure contractual recovery as outlined above.

II. ISSUES PRESENTED

1. Whether a Defendant in a state court action alleging wrongful discharge may remove the case to Federal Court where the claim is inextricably intertwined with the terms of the collective bargaining agreement and Section 301 of the Labor Management Relations Act?

2. Whether U.S.C. §1445(c) precludes removal to Federal District Court of Petitioner's state retaliatory discharge where said claims are inextricably intertwined with the terms and conditions of an applicable collective bargaining agreement?

3. Whether an employee covered by a collective bargaining agreement may avoid the preemption principles and policies of private dispute resolution embodied in Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 (LMRA), and the exclusive and mandatory grievance-arbitration procedures of that agreement, by filing a state-law action based upon "independent" common law claims for retaliatory discharge which purport to regulate the grounds for termination of the employment relationship?

III. REASONS FOR NOT GRANTING THE WRIT

A. The Seventh Circuit Properly Invoked Removal Jurisdiction Pursuant To 28 U.S.C. §1441(b) Which Permits Removal To Federal Court of A Complaint Filed In State Court Which Raises Federal Questions.

One mechanism to determine whether a claim arises under federal law is to apply the "well pleaded complaint" rule. This rule provides that the federal claim must generally appear on the face of the complaint unaided by any other pleadings, including the removal Petition. Even though a Plaintiff may urge, as does Petitioner herein, that state law creates a cause of action, the case may still "arise under" the laws of the United States if a well pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties. *Franchise Tax Board v. Construction Laborers Vacation Trust,* 463 U.S. 1 (1983). The well pleaded complaint rule is the basic principle marking the boundaries of the federal question jurisdiction of the federal courts.

Ordinarily federal preemption constitutes a federal defense to a Plaintiff's suit. As a *defense,* however, it does not appear on the face of a well pleaded complaint and, therefore, does not authorize removal to Federal Court. *Gully v. First National Bank,* 299 U.S. 109 (1936). A significant corollary to the well pleaded complaint rule, however, is that Congress may so completely preempt a particular area that any civil complaint arising within the select group of claims is necessarily federal in character. Stated another way, a Plaintiff may not engage in "artful pleading," thereby purposely framing an action under state law and omit federal questions essential to recovery. Artful pleading requires the Courts to look more closely at a Plaintiff's allegations to determine whether a federal question is raised. Such is exactly the analysis employed by the Court below, an analysis which compels the finding of federal question

jurisdiction herein. Where such an examination reveals Plaintiff's pleadings, in fact, arise under federal law, even artful pleading will not be allowed to defeat federal jurisdiction.

Petitioner's Complaint clearly illustrates the true federal nature of her claims. Thus Petitioner alleges that her discharge was without justification even within those Counts supposedly restricted to retaliatory discharge theories of recovery. Within Count V the Plaintiff alleges the existence of an employment contract and again contends that her discharge was "without justification" under said contract of employment; within Count VI Petitioner acknowledges her membership within Teamsters Local No. 50; alleges the inability of said labor organization to fulfill its duty of fair representation and/or to otherwise protect its members from discharge without just cause, thereby excusing her failure to utilize the exclusive grievance and arbitration procedure, "artfully" labeled by Plaintiff as "dispute resolution procedure with the Union." (Respondents' App., Count VI., paragraph 13G, p. A-12). Petitioner further contends, *inter alia,* that Respondents failed to employ rules for which an employee and, in particular, Petitioner could be terminated; incorrectly employed the rules specifying the procedures that must be followed in connection with an employee's termination; negligently and carelessly failed to implement or employ a policy on terminations constituting an enforcable contract; and negligently and carelessly employed a defective dispute resolution procedure with the Union as a party, incapable of fulfilling their duty of fair representation rendering the exhaustion of internal remedies a futile exercise.

Thus, Petitioner's Complaint on its face sets forth classic elements of hybrid actions arising under Section 301 of LMRA alleging employee breach of contract and union breach of a duty of fair representation and establishes areas of proof which Petitioner must sustain in order to prevail. These classic elements consist of the acknowledgment of a contract; the absence of "just cause" in the effectuation of Petitioner's

discharge; the inability of the Union to represent Petitioner and resultant inability to fulfill the Union's duty of fair representation thereby rendering futile Petitioner's utilization of the contractual "dispute resolution procedure" — i.e. grievance and arbitration procedure. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976).

This analysis underscores Petitioner's misplaced reliance on *Caterpillar, Inc. v. Williams,* 107 S.Ct. 2425 (1987). Far from failing to apply *Caterpillar,* the Court below consciously and properly applied the removal standards outlined by the Court therein. Clearly, Petitioner's claims are substantially dependent on an analysis of the collective bargaining agreement. Absent consideration of the applicable collective bargaining agreement one would not be able to reach a determination as to whether *inter alia,* Petitioner was discharged without just cause as alleged; whether the union was incapable of fulfilling its duty of fair representation thereby rendering utilization of the grievance and arbitration proceeding futile; whether the employer indeed negligently failed to correctly employ rules of grounds for which an employee, and in particular, Plaintiff could be terminated, and the plethora of other alleged ills which Petitioner seeks to attack. The resolution of those issues require analysis of the collective bargaining agreement — not agreements purportedly independent thereof. Moreover, the "agreements" independent of the collective bargaining agreement in *Caterpillar* were premised upon representations made to salaried persons at a time they were filling positions outside the collective bargaining agreement. In the instant case Petitioner was a member of the collective bargaining unit throughout her tenure of employment and those ills sought to be litigated are all subsumed within the collective bargaining agreement.

Moreover, in *Metropolitan Life Insurance Co. v. Taylor,* 107 S.Ct. 1542, (1987) this Court considered the propriety of removal of an individual's lawsuit brought in the state court of Michigan praying for judgment for compensatory damages

from money contractually owed the Plaintiff, compensation for mental anguish caused by breach of said contract, and immediate implementation of all benefits and insurance coverges arising thereunder. Additionally, the non-union Plaintiff in *Metropolitan Life* asserted claims for wrongful discharge of his employment and for wrongfully failing to promote him in retaliation for having previously filed a claim pursuant to the Michigan worker's compensation law. The Court in an opinion penned by Justice O'Connor concluded that Plaintiff's common law contract and tort claims were preempted by ERISA; that the cause of action in fact raised federal questions; and that, accordingly, removal and the application of federal preemption principles was appropriate.[1]

While *Metropolitan Life* involved ERISA preemption Justice O'Connor characterized the issue as whether Section 301 preemption "can be extended to statutes other than the LMRA in order to recharacterize a state law complaint displaced by §502(a)(1)(B) [ERISA] as an action arising under federal law," citing, *Avco Corp. v. Machinists,* 390 U.S. 557 (1968). This Court concluded the application of ERISA preemption was appropriate given ERISA's legislative history, the reliance of Congress on Section 301's "extraordinary preemptive power" and the Congressional desire to have ERISA exercise the same power. Application of *Metropolitan Life* to the instant matter underscores the propriety of the Seventh Circuit's application of Section 301 preemption herein. If preemption of worker's compensation retaliatory discharge claims in the non-union set-

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[1] As with the State of Illinois, the State of Michigan has judicially concluded that the discharge of an employee for filing a worker's compensation claim violates public policy and thereby allows a civil cause of action, notwithstanding the fact that the State Compensation Statute does not create a civil action for such a discharge. *Sventko v. Kroger Co.*, 69 Mich.App. 644, 245 N.W.2d 151 (1976). Illinois is in accord, *see Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1978).

ting is appropriate via ERISA, then certainly preemption of worker's compensation retaliatory discharge claims in the union setting pursuant to Section 301 of the LMRA is appropriate. Accordingly, the Seventh Circuit's application of Section 301 preemption in approving removal in this matter was appropriate and does not warrant the granting of a writ of certiorari.

B. Removal Of Petitioner's Complaint To Federal District Court Was Not Precluded By 28 U.S.C. §1445(c) And The Seventh Circuit Properly So Held.

The determination of the meaning of "workmen's compensation laws" in §1445(c) is a matter of federal law, regardless of the label a state may attach to such an action. Thus the determination of the Illinois Supreme Court in *Gonzalez v. Prestress Engineering Corp.*, 503 N.E.2d 308 (Ill. 1986) *cert. denied,* 55 U.S.L.W. 3870 (U.S. June 30, 1987) is not dispositive of the inquiry. Rather, the issue raises a federal question otherwise the federal framework of collective bargaining would be subject to inconsistent determinations by state courts.

In creating the cause of action for retaliatory discharge actions, the Illinois Supreme Court created common law tort. As such it arises under the common law of the State of Illinois rather than worker's compensation law. For this reason the Court below properly concluded that Petitioner's action arose not under the workmen's compensation laws of the State of Illinois but under a removable common law theory of recovery.

C. An Employee Covered By A Collective Bargaining Agreement May Not Avoid The Preemption Principles And Policies Of Private Dispute Resolution Embodied In Section 301 Of The Labor Management Relations Act, 29 U.S.C §185 (LMRA), And The Exclusive And Mandatory Grievance-Arbitration Procedures Of That Agreement, By Filing A State Law Action Based Upon "Independent" Common Law Grounds For Retaliatory Discharge Which Purport To Regulate The Grounds For Termination Of The Employment Relationship.

Respondents believe that the result reached in the Court of Appeals below constitutes a proper resolution of the particular state-law retaliatory discharge and contract claims brought by Petitioner. Those decisions reaching a contrary result have either ignored or employed an improper interpretation of this Court's recent decisions addressing Section 301 preemption and the viability of purportedly "independent" claims and rights asserted under state law. The controlling principles established by this Court, both in its recent decisions and in earlier decisions, explicate the priority of the labor contract under Section 301. These principles effectuate the congressional purpose of fostering private resolution of industrial disputes and formulating a body of federal substantive labor law. It is to these principles, and their necessary concomitant of federal preemption, that Courts should look when deciding whether to permit extra-contractual claims for relief under state-law theories of recovery. While it would be incorrect to suggest that a collective bargaining agreement and Section 301 subsume all "independent" rights and privileges generated by state law, it is equally incorrect to contend, as Petitioner apparently would, that state law rights necessarily survive simply because a particular state legislature or court has seen fit to label an area as a state-protected interest. Such an approach would stand on their heads two fundamental congressional and judicial policies: en-

couraging the private ordering of industrial relations and protecting federal uniformity of labor contracts through preemption.

The Court of Appeals properly applied this Court's holding in *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202 (1985), to find Petitioner's claims preempted. "If the policies that animate Section 301 are to be given their proper range . . . the preemptive effect of Section 301 must extend beyond suits alleging contract violations." Id. at 210-11; Pet. App. 22a. Thus, whether Petitioner was alleging a specific violation of the collective bargaining agreement framed in state-law terms, or was purporting to assert an "independent" state-law claim challenging the termination of her employment, is irrelevant in this case. If the substantive claim directly implicates the terms of employment governed by the collective bargaining agreement, said claim is preempted by Section 301.

In all events, the retaliatory discharge claims raised by Petitioner herein do depend, as the Court of Appeals recognized, "on an analysis of the terms of the [collective bargaining] agreement." (Pet. App. 24a). At all times during the term of her employment, Petitioner was a unionized employee receiving the benefits of a collective bargaining agreement and was subject to the obligations imposed by said agreement. Additionally the agreement explicitly prohibits Respondent from discharging or disciplining employees except for just cause. (Pet. App. at 4a.)[2] The collective bargaining agreement also provides a broad, mandatory grievance-arbitration procedure designed to act as the exclusive remedy for all disputes. Thus, the collective bargaining grievance procedure favored under our federal system's policy of private dispute resolution was fully and com-

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[2] Article XVI of the collective bargaining agreement covering Petitioner's employment provides in pertinent part:

> No employee who has completed the probationary period and attained regular full time status shall be discharged or disciplined except for just cause.

pletely responsive to the claims of Petitioner herein and Petitioner cannot now complain of her decision to foreclose its utilization. Petitioner's purported state-law claim that she was discharged in retaliation for announcing her intent to file a worker's compensation claims is "inextricably intertwined" with the terms of an agreement made between the parties in a labor contract and is necessarily governed by Section 301. *Allis-Chalmers,* 471 U.S. at 213.

The scope and substantive content of Section 301 are necessarily questions of "federal law, which the Courts must fashion from the policy of our national labor laws," to the exclusion of "state law." *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 456, 457 (1957). "It is the policy of the United States . . . to aid and encourage employees and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences . . . by such method as may be provided for in any applicable [collective bargaining] agreement for the settlement of disputes." LMRA Section 201(b), 29 U.S.C. §171(b); *see also* Section 203(d), 29 U.S.C. §173(d). The range of disputes subject to the collective bargaining agreement, and the corresponding reach of Section 301 preemption, extends not only to claims derivative of the collective bargaining agreement, but to the "whole employment relationship." *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 578-79 (1960).

Therefore, even if Petitioner's claims can be said, in some sense, to be independent of the collective bargaining agreement's literal terms, it is not beyond the "whole employment relationship of Petitioner and Respondents." See, for example, *AT&T Technologies, Inc. v. Communication Workers,* 106 S.Ct. 1415, 1419 (1986) providing that under Section 301, all disputes even "arguably" within the scope of the grievance-arbitration procedures must be submitted thereunder. Only such an aplication herein can pro ide meaning to this Court's

admonition in *Republic Steel Corporation v. Maddox,* 379 U.S. 650 (1965) that an individual seeking to assert claims under a contract must first "attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress." Or, as this Court recently stated in *United Paperworkers International Union v. Misco, Inc.,* 56 U.S.L.W. 4011 (December 1, 1987) ". . . where the contract provides grievance and arbitration procedures, those procedures must first be exhausted and courts must order resort to the private settlement mechanisms without dealing with the merits of the dispute." This very Court in *Perry v. Thomas,* 107 S.Ct. 2520 (1987) concluded that federal policies favored arbitration notwithstanding state substantive or procedural policies to the contrary. Accordingly, the Federal Arbitration Act preempted the California Labor Code which provided that actions for the collection of wages could be maintained "without regard to the existence of any private agreement to arbitrate." Cal. Lab. Code Ann. §229 (West 1971).

While it is certainly true that this Court in *Allis-Chalmers* and other cases has stated "It would be inconsistent with congressional intent under [Section 301] to preempt state rules that prescribe conduct, or establish rights and obligations, independent of the labor contract," 471 U.S. at 212, it cannot be true as urged by Petitioner, that a state court or legislature may gerrymander Section 301's substantive content, and avoid its preemptive force, whenever it sees fit to create "independent" laws and rights which purportedly can be litigated without reference to the collective bargaining agreement. Such a limitless rule would have the inevitable effect not only of emasculating arbitration in the collective bargaining agreement, but of nullifying — on a state by state basis — the private system of industrial self-government envisioned by Congress and this Court's decisions.

Given Petitioner's approach, there would be nothing to foreclose a state from promulgating rules to govern the most routine of situations now considered "grist in the mills of the ar-

bitrators." *Warrior & Gulf,* 363 U.S. at 584. For example, a state could prescribe the number of employee absences necessary before discharge would be appropriate, the requisite level of insubordination necessary before discharge, the significance of repeated absences or tardiness from work, rules governing overtime pay distribution or any other matter. Likewise, an enterprising Plaintiff could allege that his or her cause of action arose under policies set forth within a state constitution or a policy as set forth within state agency regulatory guidelines. Or, for that matter, an enterprising Plaintiff could, as Petitioner has herein, seek to rely on some undefined, amorphous "employment contract" which is rendered independent from a collective bargaining agreement by virtue of Plaintiff's mere incantation. Because the source of these rights was not the labor contract, but "independent state law" parallel avenues of relief would exist, denigrating free collective bargaining and causing "arbitration to lose much of its effectiveness." *Allis-Chalmers,* 471 U.S. at 219-220; *Republic Steel Corp. v. Maddox,* 379 U.S. 650 (1965). "Claims involving vacation or overtime pay, work assignment, *unfair discharge* — in short, the whole range of disputes traditionally resolved through arbitration — would be brought in the first instance in state court by a complaint in tort rather than in contract." *Allis-Chalmers,* 471 U.S. at 219-220 (emphasis not in original).

Such is exactly the evil which this Court sought to avoid in *Allis-Chalmers.* Petitioner's state court eleven (11) count Complaint illustrates the very evil such a policy would envision. Within the first four (4) counts Petitioner seeks compensatory and punitive damages on the ground that she was discharged because she had stated her *intention* to exercise her rights under the Illinois Worker's Compensation Act and was otherwise discharged "without other justification." Count V was directed against an employee, John Snyder, for intentional interference with Petitioner's employment contract with G. Heileman Company. Counts VI and VII of Petitioner's Complaint were directed against Defendant Rhein for negligently

and willfully failing to correctly implement discharge procedures. Counts VIII and IX of Petitioner's Complaint were directed against Carling National Brewery and the G. Heileman Company, respectively, alleging the same theories of liability as Counts VI and VII on the ground that the two (2) Companies were responsible for the actions of their agent Rhein. Counts X and XI contain the same allegations as Counts VIII and IX, but request punitive damages.

While making no express reference to the collective bargaining agreement Petitioner's Complaint is inundated with references to an employment contract. Those pleadings reveal, for example, that Petitioner's employment as a brewery worker was in exchange for payment of wages, (Respondents' App., Count V, paragraph 2, p. A-6). Those wages provided Petitioner were afforded pursuant to Article XIV of the applicable collective bargaining agreement. Petitioner goes on to allege that Respondents Rhein and Snyder engaged in various acts which resulted in Plaintiff's contract of employment with Heileman Brewing Company [being] terminated. This termination, alleges Petitioner, resulted in "interference with the [Petitioner's] contract rights." (Respondents' App., Count V, paragraph 9, p. A-8). Notwithstanding the steady reference to an "employment contract"; Petitioner's "employment rights"; and Petitioner's "employment benefits," Petitioner makes no mention of any contract other than that reflected in the collective bargaining agreement.

Count VI of Petitioner's Complaint further underscores the Section 301 LMRA nature of Petitioner's cause of action. Within Count VI Plaintiff concedes her membership within Teamsters Local Union No. 50, a Union which Petitioner alleges was unable to protect employees from "discharge without just cause." (Respondents' App., Count VI, paragraph 8, p. A-9 - A-10). Continuing, Petitioner alleges that her June 28, 1983 discharge resulted from, *inter alia:* the improper employment of those "rules specifying the procedures

that must be followed in connection with an employee's termination" (Respondents' App., Count VI, paragraph 13B., p. A-11); the failure to discharge Petitioner "based wholly on just cause, failed to extend to and insure Plaintiff procedural steps of progressive discipline" (Respondents' App., Count VI, paragraph 13C., p. A-11); "negligently and carelessly fail[ing] to implement or employ a policy on terminations constituting an enforceable contract between [Petitioner] and [Petitioner's] employer;" (Respondents' App., Count VI, paragraph 13D., p. A-11); and "negligently and carelessly employ[ing] a defective dispute resolution procedure with the Union, as a party, incapable of fulfilling the duty of fair representation rendering the exhaustion of internal remedies a futile exercise for the reason that any existing remedies were inadequate." (Respondents' App., Count VI, paragraph 13G., p. A-12). Perhaps of even greater interest is that throughout Counts V through XI, inclusive, (all of which clearly allege a discharge in contravention of contract) consistent reference is made to Petitioner's dismissal resulting from her intention to report an injury allegedly arising under the Worker's Compensation Act (Respondents' App. Count V, paragraphs 6 and 7, p. A-7; and Count VI, paragraphs 5, 11 and 13F, p. A-9 - A-12). In these circumstances the Seventh Circuit properly concluded that Plaintiff's state claims were inextricably intertwined with the terms and conditions of the applicable collective bargaining agreement.

Petitioner asserts that a substantial conflict exists among the Circuits warranting the granting of Certiorari in the instant matter. The Eighth Circuit, like the decision below, has decided that state retaliatory discharge claims are preempted. *Johnson v. Hussmann Corp.*, 805 F.2d 795 (8th Cir. 1986). Petitioner asserts, however, that decisions of the Second, Third and Tenth Circuits run contrary to the Seventh and Eighth Circuits with respect to the issues raised herein. *Baldracchi v. Pratt and Whitney*, 814 F.2d 102 (2nd Cir. 1987); *Herring v. Prince Macaroni*, 799 F.2d 120, 122 (3rd Cir. 1986); and *Peabody*

Galion v. A.V. Dollar, 666 F.2d 1309 (10th Cir. 1981). A careful review of these decisions illustrates that no great conflict exists among the Circuits.

The Third Circuit in *Herring v. Prince Macaroni* failed to even consider the import of *Allis-Chalmers* prompting at least one commentator to question that Court's awareness of the *Allis-Chalmers* decision. "Preemption of Workers' Compensation Retaliatory Discharge Laws", *Employee Relations Law Journal*, Volume 12, No. 4 (Spring 1987). This oversight is not surprising given the court's articulated concern with predicting the New Jersey Supreme Court's resolution of the civil actionability of a union worker's allegation of a discharge in retaliation for filing worker's compensation claims, rather than with the issue of preemption. Moreover, the Third Circuit did *not* retreat from its prior affirmance of a District Court determination that such an action was, indeed, preempted. *Costello v. United Parcel Service, Inc.*, 617 F.Supp. 123 (D.C. Pa. 1984), affirmed 774 F.2d 1150 (3rd Cir. 1985). Similarly the Tenth Circuit's decision in *Peabody Galion* predated *Allis-Chalmers* and, accordingly, does not include an analysis of this Court's formulation of the analytical framework to be utilized in such cases. Finally, a number of state courts examining the issues raised herein have concluded that the just cause provisions of the collective bargaining agreement act to preempt retaliatory discharge claims.[1] This split among the state courts, far from warranting the issuance of a writ in the instant case commands a

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[1] *Brevik v. Kite Painting, Inc.*, 404 N.W.2d 367 (Minn. App. 1987) (just cause provisions of the collective bargaining agreement would preempt retaliatory discharge claim); *Cox v. United Technologies, Essex Group, Inc.*, 727 P.2d 456 (Kan. 1986) (same); *Smith v. Montana Power co.*, 731 P.2d 924 (Mont. 1987) (same); *Phillips v. Babcock & Wilcox*, 503 A.2d 36 (Pa. Super. 1986) (same); *Kramer v. McGlynn Bakeries, Inc.*, 738 S.W.2d 892 (Mo. App. 1987); *MGM Grand Hotel - Reno v. Insley*, 728 P.2d 821 (Nev. 1986) (no preemption); *Yoho v. Triangle PWC, Inc.*, 336 S.E.2d 204 (W. Vir. 1985) (same).

denial of the writ and affirmance of the Seventh Circuit Court's decision. To conclude otherwise creates an intolerable vice which Section 301 has sought to relieve, that is, inconsistent state adjudications impacting upon federal labor law.

For all the reasons outlined above the Seventh Circuit properly applied this Court's precedent in affirming the decision of the District Court. Accordingly, the petition for a writ of certiorari should not be granted.

IV. CONCLUSION

For the reasons stated herein, the petition for a writ of certiorari should be denied and the judgment of the court of appeals summarily affirmed.

Respectfully submitted,

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January 19, 1988

APPENDIX

APPENDIX

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

No. 85 L 641

Pamela S. Martin,
Plaintiff,

v.

Carling National Breweries, Inc.
a foreign corporation,
G. Heileman Brewing Company, Inc.,
a foreign corporation,
d/b/a Carling National Breweries,
John Synder and Charles Rhein,
Defendants.

COMPLAINT

(Filed: June 27, 1985)

COUNT I

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, Carling National Breweries, Inc., a foreign corporation, says:

1. That the Defendant, Carling National Breweries, Inc., is a corporation, organized under the laws of the State of Wisconsin and was, on June 28, 1983, doing business at its principal place of business in Belleville, St. Clair County, Illinois, at its brewery located at 1201 West "E" Street, Belleville, Illinois.

2. On June 28, 1983, and for a period of time prior thereto, the Plaintiff, Pamela S. Martin, was employed by the Defendant in Belleville, St. Clair County, Illinois, where the Defendant is now doing business.

3. On June 26, 1983, the Plaintiff injured herself at Cellar No. 7 in Belleville, Illinois, in the course of her employment with the said Defendant.

4. The Defendant is subject to the Illinois Worker's Compensation Act by reason of Ch. 48, Sec. 138.3 of the *Illinois Revised Statutes.*

5. The Defendant has elected to insure its liability under the Worker's Compensation Act by and through a licensed, authorized worker's compensation insurance carrier, pursuant to *Ill. Rev. Stats.*, Ch. 48, Sec. 138.4.

6. That on said date, the Plaintiff, by and through her husband, notified the Defendant that she had injured her back on the morning of June 26, 1983, while in the course and scope of her employment with the Defendant, that she was seeking medical attention and that she would report back to work.

7. On June 27, 1983, the Plaintiff further notified the Defendant by notifying the Defendant's employee, Gary Strittmatter, that she was injured at work, that she was restricted from employment by a doctor's written statement of restriction.

8. In April, 1982, the Plaintiff sustained injuries as a result of a fall which arose out of the course and scope of her employment while working for the Defendant. Upon reporting the accidental injury to the Defendant's representative, she was advised by said representative that it was the Defendant's policy to resist any time off to employees for injuries sustained on the job, to not furnish or make available a physician for the treatment of employees for injuries sustained on the job, and that the filing of worker's compensation claims was definitely discouraged as the official policy of the Defendant. Plaintiff did not file a worker's compensation claim for that injury as a result of said advice, for the reason of a reasonable fear of losing her employment.

9. On June 28, 1983, the Plaintiff advised the Defendant, by and through its employee, Charles Rhein, that she had injured herself on the job, was under a doctor's care, and was restricted from further employment, and that she was claiming her rights to worker's compensation benefits, and that she was going to "fight back" and she intended to file a worker's compensation claim if she was denied benefits.

10. On June 28, 1983, at a meeting with Plaintiff on Defendant's premises, two representatives of Defendant reaffirmed the above policy of Defendant to discourage employees from filing worker's compensation claims, and one of said representatives told the Plaintiff prior to said meeting earlier that day to "back off' from her assertion of rights to injury benefits claimed by her.

11. On said date, at the meeting held on the premises of the Defendant, Charles Rhein, a representative of Defendant, acting within his authority, did discharge the Plaintiff.

12. Plaintiff's discharge was without other justification and in retaliation for Plaintiff having threatened to file a worker's compensation claim and otherwise taking steps to enforce her right to worker's compensation benefits which she claimed against the Defendant and such discharge is contrary to the public policy of the State of Illinois, as stated in the Worker's Compensation Act, *Ill. Rev. Stats.*, 1983, Ch. 48, Par. 138.4(h), and as stated in the decisions of this State's courts as made and provided.

13. That as a direct and proximate result of the said wrongful conduct of the Defendant, the Plaintiff lost her means of support and employment benefits.

WHEREFORE, Plaintiff prays judgment against the Defendant for compensatory damages in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT II

Now comes the Plaintiff, Pamela S. Martin, by her attorney, Ralph T. Stenger, and complaining of the Defendant, G. Heileman Brewing Company, Inc., a foreign corporation, d/b/a Carling National Breweries, in the alternative, says:

1. The Defendant, G. Heileman Brewing Company, Inc., is a foreign corporation, doing business on June 28, 1983, in the City of Belleville, St. Clair County, Illinois, by and under the name of both the Carling National Breweries, a corporation, or in the alternative, Carling National Breweries and the name of G. Heileman Brewing Company, Inc., although said corporation was not registered under Ch. 96, *Ill. Rev. Stats.*, commonly known as the Illinois Assumed Name Act.

2. The identity, officers, stockholders and Board of Directors of the Defendant are identical to that of the Carling National Breweries, Inc., and were such on the 28th day of June, 1983, if Carling National Breweries had any corporate status on said date, and said Defendant controlled and directed the said Carling National Breweries, Inc., a corporation, and that latter is a shell corporation which was merely an instrument of the Defendant, and there is an identity of corporate interest between the two corporations rendering the Defendant the owner of the property and the instrument of employment policy at the place of employment of the Plaintiff with the Defendant at the time of the incidents alleged in Plaintiff's Complaint.

3. On June 28, 1983, and for a period of time prior thereto, the Plaintiff was employed by the Defendant, G. Heileman Brewing Company, Inc., at its brewery located at 1201 West "E" Street, Belleville, St. Clair County, Illinois.

4-15. Plaintiff repeats and realleges Paragraphs 3 through 13 of Count I of her Complaint as Paragraphs 4 through 15 of this Count II.

WHEREFORE, Plaintiff prays judgment against the Defendant, G. Heileman Brewing Company, Inc. for compensatory damages in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT III

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, Carling National Breweries, Inc., a foreign corporation, says:

1-13. Plaintiff repeats and realleges Paragraphs 1 through 13 of Count I of her Complaint as similarly numbered Paragraphs of this Count III.

14. The Defendant's restrictive policy, designed to restrain employees from claiming time off from work due to on-the-job injuries and claiming worker's compensation benefits during said time and the discharge of Plaintiff in furtherance of such policy, constitutes a willful and wanton disregard of the laws of the State of Illinois.

WHEREFORE, Plaintiff demands judgment against the Defendant for punitive damages in the sum of TWO MILLION ($2,000,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT IV

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, G. Heileman Brewing Company, Inc., a foreign corporation, d/b/a Carling National Breweries, says:

1-15. Plaintiff repeats and realleges Paragraphs 1 through 15 of Count II of her Complaint as similarly numbered Paragraphs of this Count IV.

16. Plaintiff repeats and realleges Paragraph 14 of Count III of her Complaint as Paragraph 16 of this Count IV.

WHEREFORE, Plaintiff demands judgment against the Defendant for punitive damages in the sum of TWO MILLION ($2,000,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT V

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, John Snyder, says:

1. That on June 28, 1983, and for a period of time prior thereto, the Plaintiff, Pamela S. Martin, was employed by the Carling National Breweries, and/or of G. Heileman Brewing Company, Inc., a foreign corporation, or in the alternative, Carling National Breweries, Inc., a foreign corporation, (hereinafter called "Heileman Brewing Company"), in Belleville, St. Clair County, Illinois. The Plaintiff is a citizen of and resides in the State of Illinois.

2. Under the terms and conditions of her employment contract with the Heileman Brewing Company, Plaintiff was to perform tank cleaner services as a brewery worker at the Heileman Brewing Company brewery in exchange for payment of wages, and said employment contract was to continue for as long as the Plaintiff was able to and did perform said services and the Heileman Brewing Company was in need of such brewery labor worker services at its brewery facilities.

3. Said employment contract was a valid and subsisting agreement between the Plaintiff and Heileman, reasonably expected to continue for a reasonable period of time, after June 28, 1983, and said contract was a valuable property right of the Plaintiff.

4. That during the month of June, 1983, the Defendant, John Snyder, was an employee of the Heileman Brewing Company, and was and is a resident and citizen of the State of Illinois.

5. That during the month of June, 1983, Charles Rhein, a/k/a Charlie Rhein, was a supervisory employee of the Heileman Brewing Company in the Public Relations Division of said Company, at its brewery in Belleville, St. Clair County, Illinois.

6. That between June 26, 1983, and June 28, 1983, and in particular, on June 28, 1983, the said Defendant, John Snyder, had several discussions with the said Charles Rhein at the brewery in Belleville, Illinois. The purpose and intent of said conversations and discussions, on the part of the Defendant, John Snyder, was to inform, encourage and convince the said Charlie Rhein to discharge Plaintiff from her employment for the purported reason that her report of an on-the-job injury and request for medical and time-off benefits due her under the Illinois Worker's Compsensation Act were not justified, were based upon false information, or in the alternative, were contrary to the Heileman Brewing Company's policy to the extent that her employment termination was justified or otherwise in the best interest of the operation of the brewery.

7. At said time and place as aforesaid, the information communicated by the Defendant, John Snyder, as aforesaid, relating to Plaintiff's report of an on-the-job injury and request for benefits under the Worker's Compensation Act and time off from work was false, the Defendant, John Snyder, knew that the same was false, and knew that if false information was believed by the said Charlie Rhein and/or other officers of the Heileman Brewing Company, the same would result in Plaintiff's wrongful discharge and termination of Plaintiff's employment contract with the said Heileman Brewing Company.

8. That on June 28, 1983, as the direct and proximate result of the Defendant's conduct, the Defendant intentionally, wan-

tonly, maliciously and without justification interfered, disrupted and damaged the employment rights of the Plaintiff, and the Plaintiff's contract of employment with Heileman Brewing Company was terminated.

9. As a further direct and proximate result of the foregoing interference with the Plaintiff's contract rights, the Plaintiff has sustained losses and wages and employment benefits, which she otherwise would have earned even though Plaintff has attempted to mitigate her damages.

WHEREFORE, Plaintiff demands judgment against the Defendant, John Snyder, in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS as compensatory damages and the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS punitive damages, costs of suit, and demands trial by jury.

COUNT VI

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, Charles Rhein, says:

1. That on or about June 28, 1983, and for a period prior thereto, the Defendant, Charles Rhein, was an employee of the Carling National Breweries, a subsidiary of G. Heileman Brewing Company, Inc., hereinafter called "Heileman Brewing Company" in the Public Relations Department at its brewery in Belleville, St. Clair County, Illinois, and said Defendant is a citizen of and residing in the State of Illinois.

2. On June 28, 1983, and for a period of time prior thereto, the Plaintiff, Pamela S. Martin, was employed by the G. Heileman Brewing Company in Belleville, St. Clair County, Illinois, and the Plaintiff is a citizen of and resides in the State of Illinois.

3. On June 26, 1983, the Plaintiff injured herself in the course of her employment with the Heileman Brewing Company, at its brewery where the Defendant was carrying out the duties and responsibilities of his employment as a Public Relations employee of the said brewery.

4. On said date, the Plaintiff, by her husband, notified the Heileman Brewing Company of her injury.

5. On June 28, 1983, the Plaintiff advised the Defendant, Charles Rhein, that she had injured herself on the job and was under a doctor's care, and was restricted from further employment, and that she would be claiming her rights under worker's compensation benefits, and the said Defendant requested that the Plaintiff attend a meeting on said date with the Defendant, John Snyder and one Mike Campbell, to discuss her reported injury, request for time off, and right to benefits under the Illinois Worker's Compensation Laws.

6. On said date as aforesaid and just before the conclusion of said meeting, the Defendant advised the Plaintiff that he was dismissing the Plaintff and that she was officially discharged from work, and that her benefits would end as of midnight that night.

7. That Plaintiff, at the time of said meeting and at the time of her discharge, was a member of Teamsters Local Union No. 50, Belleville, Illinois.

8. That at all times mentioned herein, the Defendant, Charles Rhein, knew that the said Teamsters Local Union 50, Plaintiff's representatives, were unable to adequately represent the employment interests of the Plaintiff as the result of many concessions granted to the Heileman Brewing Company made to induce the said brewing company not to close the brewery, and as the result of said concessions, there was unwritten but highly understood policy of non-interference on the part of said Teamsters Local Union No. 50, not to interfere with discipline

and discharge procedures on the part of the Heileman Brewing Company to the extent and degree for all practical and legal purposes, said Union afforded neither the Plaintiff nor other members, any substantial protection against arbitrary, discriminatory, bad faith, malicious, and other forms of discharge without just cause based upon unfair dealings with employees of the said brewing company.

9. That at all times herein mentioned, the Defendant, Charles Rhein, was aware that the Plaintiff was employed by the Heileman Brewing Company as a tank cleaner, and was to perform such services in exchange for payment of wages and said contract was to continue for as long as the Plaintiff was able to perform said services satisfactorily and the Heileman Brewing Company was in need of such tank cleaning or similar brewery worker services at its brewery facilities.

10. That at all times mentioned herein, the Defendant, Charles Rhein, further knew that the said employment contract was a valid and subsisting agreement between the Plaintiff and the Defendant, reasonably expected to continue for a reasonable period of time after June 28, 1983, and said contract was a valuable property right of the Plaintiff.

11. That between June 26, 1983 and June 28, 1983, the Defendant, Charles Rhein, received information from certain employees of the Plaintiff's employer, notifying and advising the said Defendant that the Plaintiff had sustained an on-the-job injury while working in the course and scope of her employment, that she had seen a physician for diagnosis and treatment of her aforesaid injury, that she was restricted from further work by a doctor's written restriction due to said injuries, that the Plaintiff would otherwise be unable to temporarily carry out the duties of her employment, and that she was claiming rights under Worker's Compensation benefits as the result of an injury sustained on her job.

12. That on June 28, 1983, at a meeting called by the Defendant, Charles Rhein, with the Plaintiff and other employees of

the Defendant, he discharged the Plaintiff from her employment with the Heileman Brewing Company.

13. That the discharge of the Plaintiff from her employment was the direct and proximate result of one or more of the following negligent acts or omissions of the Defendant, to-wit:

A. Negligently and carelessly failed to correctly employ rules for grounds for which an employee, and in particular, the Plaintiff, could be terminated;

B. Negligently and carelessly and incorrectly employed the rules specifying the procedures that must be followed in connection with an employee's termination, and in particular, the Plaintiff's termination;

C. Negligently and carelessly and contrary to the implied covenant of good faith and fair dealing and to discharge based wholly on just cause, failed to extend to and insure Plaintiff procedural steps of progressive discipline, oral warning, written warning, suspension and an opportunity to remediate prior to discharge;

D. Negligently and carelessly failed to implement or employ a policy on terminations constituting an enforceable contract between the Plaintiff and Plaintiff's employer by taking action against the Plaintiff and other employees only for reasons bearing on a legitimate relationship for the employer's business requirements and only after providing for procedures that develop the facts respecting the adverse action reliably including an opportunity for the Plaintiff and other employees to present his or her side of the controversy, call witnesses on their behalf, review their employment record, and charges against them, and such other procedures or similar or substitute procedures affording significant substantive fairness to the Plaintiff in a dismissal decision by the Defendant;

E. Negligently and carelessly denied the Plaintiff any right to obtain a higher level of review of supervisory actions adverse to

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the Plaintiff resulting in a decision to terminate Plaintiff's employment;

F. Negligently and carelessly failed to advise or otherwise warn the Plaintiff that reporting her injury and furnishing a doctor's restriction slip and advising of her intention to collect worker's compensation benefits would result in her discharge;

G. Negligently and carelessly employed a defective dispute resolution procedure with the Union, as a party, incapable of fulfilling its duty of fair respresentation rendering the exhaustion of internal remedies a futile exercise for the reason that any existing remedies were inadequate;

H. Negligently and carelessly employed a basis for a discharge which did not constitute a bona fide occupational qualification reasonably necessary to the proper performance of the Plaintiff's duties of her position.

14. As a direct and proximate result of the foregoing negligent conduct of the Defendant, the Plaintiff's employment was terminated by the Defendant, and the Plaintiff lost her means of support and employment benefits.

WHEREFORE, Plaintiff prays judgment against the Defendant, Charles Rhein, in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS and costs of suit, and demands trial by jury.

COUNT VII

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, and complaining of the Defendant, Charles Rhein, states:

1-12. Plaintiff repeats and realleges Paragraphs 1 through 12 of Count VI of this Complaint as similarly numbered Paragraphs of this Count VII.

13. That the discharge of the Plaintiff from her employment was the direct and proximate result of one or more of the following willful and wanton acts of reckless disregard for the employment rights of the Plaintiff, to-wit:

A. Willfully, wantonly and recklessly failed to correctly employ rules for grounds for which an employee, and in particular, the Plaintiff, could be terminated;

B. Willfully, wantonly and recklessly and incorrectly employed the rules specifying the procedures that must be followed in connection with an employee's termination, and in particular, the Plaintiff's termination;

C. Willfully, wantonly and recklessly and contrary to the implied covenant of good faith and fair dealing and to discharge based wholly on just cause, failed to extend to and insure Plaintiff procedural steps of progressive discipline, oral warning, written warning, suspension and an opportunity to remediate prior to discharge;

D. Willfully, wantonly and recklessly failed to implement or employ a policy on termination constituting an enforceable contract between the Plaintiff and Plaintiff's employer by taking action against the Plaintiff and other employees only for reasons bearing on a legitimate relationship to the employer's business requirements and only after providing for procedures that develop the facts respecting the adverse action reliably including an opportunity for the Plaintiff and other employees to present his or her side of the controversy, call witnesses on their behalf, review their employment records, and charges against them, and such other procedures or similar or substitute procedures affording significant substantive fairness to the Plaintiff in a dismissal decision by the Defendant;

E. Willfully, wantonly and recklessly denied the Plaintiff any right to obtain a higher level of review of supervisory actions adverse to the Plaintiff resulting in a decision to terminate Plaintiff's employment.

F. Willfully, wantonly and recklessly, failed to advise or otherwise warn the Plaintiff that reporting her injury and furnishing a doctor's restriction slip and advising of her intention to collect worker's compensation benefits would result in her discharge.

G. Willfully, wantonly and recklessly employed a defective dispute resolution procedure with the Union, as a party, incapable of fulfilling the duty of fair representation rendering the exhaustion of internal remedies a futile exercise for the reason that any existing remedies were inadequate.

H. Willfully, wantonly and recklessly employed a basis for a discharge which did not constitute a bona fide occupational qualification reasonably necessary to the proper performance of the Plaintiff's duties of her position.

14. As a direct and proximate result of the foregoing willful and wanton conduct of the Defendant, the Plaintiff's employment was terminated by the Defendant, and the Plaintiff lost her means of support and employment benefits.

WHEREFORE, Plaintiff prays judgment against the Defendant, Charles Rhein, in the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS as punitive damages, costs of suit, and demands trial by jury.

COUNT VIII

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, Carling National Breweries, Inc., a foreign corporation, says:

1. Repeats and realleges Paragraph 1 of Count I of her Complaint as Paragraph 1 of this Count VIII.

2. That at all times mentioned herein, the Defendant, Charles Rhein, was an employee and agent of the Defendant, Carling National Breweries, acting within the course and scope of his employment.

3-17. Plaintiff repeats and realleges Paragraphs 1 through 14 of Count VI of her Complaint as Paragraphs 3 through 17 of this Count VIII.

WHEREFORE, Plaintiff prays judgment against the Defendant, Carling National Breweries, in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT IX

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, G. Heileman Brewing Company, Inc., a foreign corporation, d/b/a Carling National Breweries, says:

1. Repeats and realleges Paragraph 1 of Count II of her Complaint as Paragraph 1 of this Count IX.

2-17. Repeats and realleges Paragraphs 2 through 17 of Count VIII as Paragraphs 2 through 17 of this Count IX.

WHEREFORE, Plaintiff prays judgment against the Defendant, G. Heileman Brewing Company, Inc., a foreign corporation, d/b/a Carling National Breweries, in the sum of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS, costs of suit, and demands trial by jury.

COUNT X

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, Carling National Breweries, Inc., a foreign corporation, says:

1. Repeats and realleges Paragraph 1 of Count I of her Complaint as Paragraph 1 of this Count X.

2. Repeats and realleges Paragraph 2 of Count VIII as Paragraph 2 of this Count X of her Complaint.

3-17. Repeats and realleges Paragraphs 1 through 14 of Count VII of her Complaint as Paragraphs 3 through 17 of this Count X of her Complaint.

WHEREFORE, Plaintiff prays judgment against the Defendant, Carling National Breweries, Inc., a foreign corporation, in the sum of TWO MILLION ($2,000,000.00) DOLLARS as punitive damages, costs of suit, and demands trial by jury.

COUNT XI

Now comes the Plaintiff, Pamela S. Martin, by Ralph T. Stenger, her attorney, and complaining of the Defendant, G. Heileman Brewing Company, Inc., a corporation, d/b/a Carling National Breweries, says:

1. Repeats and realleges Paragraph 1 of Count II of her Complaint as Paragraph 1 of this Count XI.

2-17. Repeats and realleges Paragraphs 2 through 17 of Count X of her Complaint as Paragraphs 2 through 17 of this Count XI.

WHEREFORE, Plaintiff prays judgment against the Defendant, G. Heileman Brewing Company, Inc., a foreign corporation, d/b/a Carling National Breweries, in the sum of TWO MILLION ($2,000,000.00) DOLLARS as punitive damages, costs of suit, and demands trial by jury.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

PAMELA S. MARTIN,
Plaintiff

By: Her Attorney

LAW OFFICES OF
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